

**UNITED STATES BANKRUPTCY COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

In re Glenn Canterbury)
) Case No. 18-57499
) Chapter 13
) Judge C. Kathryn Preston

Debtor/s

**MOTION FOR DETERMINATION THAT MORTGAGE/LIEN IS
WHOLLY UNSECURED AND VOID**

Glenn Canterbury, through counsel, (the "Debtor," whether individually or collectively) moves the court, pursuant to 11 U.S.C. §§ 506, 1322(b)(2), 1325(a) and 1327(c), and Federal Rules of Procedure 3012, 9013 and 9014(b), for an order determining that the mortgage/lien of

The Ohio Department of Taxation (for 2004 taxes at issue in Claim No. 9) (the "Creditor") is wholly unsecured and void.

Memorandum In Support

(1) The Debtor filed a voluntary petition under chapter 13 of the Bankruptcy Code on November 29, 2018 (the "Petition Date").

(2) As of the Petition Date, the Debtor was the owner of the following real property located at 115-117 Chicago Ave., Columbus, OH 43222 (the "Property"). The Debtor owns the Property jointly with Glenn Canterbury, Jr.

☒ A legal description of the Property is attached as Exhibit A.

(3) The value of the Property as of the Petition Date, as set forth in the appraisal filed with the Court at Doc. 10, was \$ 35,000.00.

(4) The Debtor's interest in the Property as of the Petition Date was \$ 17,500.00.

(5) As of the Petition Date, the Property was subject to certain mortgages/liens in the amounts specified and in the relative priority set forth below:

First mortgage/lien:

Franklin County Treasurer statutory lien for 2018 Real Estate Taxes due but unpaid (Claim No. 10) in the amount of \$ 1,407.36. The first mortgage/lien was obtained by the mortgagee/lienholder on January 1, 2018. The first mortgage/lien was filed on January 1, 2018, in the Franklin County Auditor records of real estate taxes due, at inherent first priority statutory lien for real estate taxes assessed.

<p><u>Subsequent mortgage/lien:</u> City of Columbus Department of Income Tax (see Claim No. 4) in the amount of \$ <u>5,215.47</u> . The <u>subsequent</u> mortgage/lien was obtained by the mortgagee/ lienholder on <u>June 29, 2007</u> . The <u>subsequent</u> mortgage/lien was filed on <u>June 29, 2007</u> , in the <u>Franklin County Court of Common Pleas</u> at <u>07JG017998</u> This mortgage/lien is the <u>2nd</u> mortgage/lien on the Property.</p>
<p><u>Subsequent mortgage/lien:</u> The Ohio Department of Taxation (see 2003 taxes in Claim No. 9) in the amount of \$ <u>16,034.69</u> . The <u>subsequent</u> mortgage/lien was obtained by the mortgagee/ lienholder on <u>October 2, 2012</u> . The <u>subsequent</u> mortgage/lien was filed on <u>October 2, 2012</u> , in the <u>Franklin County Court of Common Pleas</u> at <u>12JG037231</u> This mortgage/lien is the <u>3rd</u> mortgage/lien on the Property.</p>
<p><u>Subsequent mortgage/lien:</u> Ohio Bureau of Workers' Compensation (see Claim No. 12) in the amount of \$ <u>4,475.47</u> . The <u>subsequent</u> mortgage/lien was obtained by the mortgagee/ lienholder on <u>November 23, 2015</u> . The <u>subsequent</u> mortgage/lien was filed on <u>November 23, 2015</u> , in the <u>Franklin County Court of Common Pleas</u> at <u>15JG050222</u> This mortgage/lien is the <u>4th</u> mortgage/lien on the Property.</p>
<p><u>Subsequent mortgage/lien:</u> Ohio Bureau of Workers' Compensation (see Claim No. 11) in the amount of \$ <u>694.79</u> . The <u>subsequent</u> mortgage/lien was obtained by the mortgagee/ lienholder on <u>November 27, 2015</u> . The <u>subsequent</u> mortgage/lien was filed on <u>November 27, 2015</u> , in the <u>Franklin County Court of Common Pleas</u> at <u>15JG050977</u> This mortgage/lien is the <u>5th</u> mortgage/lien on the Property.</p>

The Creditor's mortgage/lien sought to be avoided is in the amount of \$ 1,211.91 . This mortgage/lien was obtained by the Creditor on December 17, 2015 . This mortgage/lien was filed on December 17, 2015 , in the Franklin County Court of Common Pleas , at 15JG053990 .

(6) Value of the property: \$ 17,500.00
Total amount of all mortgages/liens superior to the Creditor's mortgage/lien: \$ 27,827.78

(7) The amount of the mortgage(s)/lien(s) senior to the mortgage/lien to be avoided exceeds the value of the Property. As a result, there is no equity to which the Creditor's mortgage/lien may attach, and the Creditor's mortgage/lien is wholly unsecured and void under the combined effect of 11 U.S.C. §§ 506(a), 1322(b)(2), 1325(a) and 1327(c) and the terms of the Debtor's plan. *See Lane v. Western Interstate Bancorp. (In re Lane)*, 280 F.3d 663 (6th Cir. 2002).

(8) Unless otherwise ordered, the claim of the Creditor, if filed, shall be allowed and paid only as an unsecured nonpriority claim and shall be treated under the Debtor's Chapter 13 plan in the same manner as all other unsecured nonpriority claims.

(9) Upon the earlier of (a) payment of the underlying debt determined under nonbankruptcy law, (b) discharge of the underlying debt under 11 U.S.C. 1328, or (c) completion of the Plan, the mortgage/lien of the Creditor on the Property will be avoided. If the Creditor fails to timely release the mortgage/lien, the Debtor may submit an order granting this motion to the applicable court or recorder's office as evidence of the release of the Creditor's mortgage/lien.

WHEREFORE, the Debtor requests that the court grant the Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void.

Respectfully submitted,

/s/ Marshall D. Cohen

Marshall D. Cohen (0044066)

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Notice of Motion

Debtor has filed a Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void.

Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one in this bankruptcy case. If you do not have an attorney, you may wish to consult one.

If you do not want the court to grant the relief sought in the motion, then on or before **twenty-one (21) days from the date set forth in the certificate of service for the motion**, you must file with the court a response explaining your position by mailing your response by first class mail to:

United States Bankruptcy Court, 170 North High Street, Columbus, Ohio 43215

OR your attorney must file a response using the court's ECF System.

The court must **receive** your response on or before the above date.

You must also send a copy of your response either by 1) the court's ECF System or by 2) first class mail to:

Glenn Canterbury, 459 Prospect St., Columbus, OH 43204

Attorney Marshall D. Cohen, Marshall D. Cohen LLC, 1500 West 3rd Ave., Suite 400, Columbus, OH 43212

Frank M. Pees, 130 E. Wilson Bridge Road, Suite 200, Worthington, Ohio 43085

Office of the US Trustee, 170 N. High Street, Suite 200, Columbus, OH 43215-2403

If you or your attorney do not take these steps, the court may decide that you do not oppose the relief sought in the motion and may enter an order granting the relief without further hearing or notice.

Certificate of Service

I hereby certify that a copy of the foregoing Motion for Determination that Mortgage/Lien is Wholly Unsecured and Void was served electronically on the date of filing through the court's ECF system on all ECF participants registered in this case at the email address registered with the court and

by first class mail on June 6, 2019 addressed to:

Glenn Canterbury, 459 Prospect St., Columbus, OH 43204

Ohio Department of Taxation, Bankruptcy Division, PO Box 530, Columbus, OH 43216

Ohio Attorney General, Collection Enforcement Attn: Bankruptcy, 150 East Gay Street, 21st Floor, Columbus, OH 43215

Attorney Brian M. Gianangeli, The Law Office of Charles Mifsud, LLC, 6305 Emerald Parkway, Dublin, OH 43016

Ohio Department of Taxation, Bankruptcy Division, 30 E. Broad St., 23rd Floor, Columbus, OH 43215

Attorney Rebecca L. Daum, Ohio Department of Taxation, 30 E Broad Street, 21st Floor, Columbus, OH 43216

/s/ Marshall D. Cohen

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